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Atty. Dkt. No. 038519-0304

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Lawrence J. WANGH et al.
Title: NUCLEIC ACID PROCESSING METHODS,
KITS AND DEVICES
Appl. No.: 10/557,280
Filing Date: 11/18/2005
Examiner: Angela M. BERTAGNA
Art Unit: 1637
Confirmation Number: 8830

RESPONSE TO RESTRICTION REQUIREMENT

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This communication is responsive to a non-final Office Action dated January 4, 2007 concerning the captioned patent application. Because this response is being filed within 31 days of the mailing date of the Office Action, it is timely filed. While no fees are believed due, the Commissioner is hereby authorized to charge any deficiency to Deposit Account No. 19-0741 determined to be necessary for this response to be considered timely.

The Office Action requires election of one of Groups I and II, as defined on page 2 of the Office Action. According to the Office Action, these two groups "do not relate to a single general inventive concept under PCT Rule 13.1, because under PCT Rule 13.2, they lack the same or corresponding special technical features." Office Action at 2.

Applicants provisionally elect Group I, claims 1-23, 37, and 38 for examination, with traverse. The instant restriction requirement is not proper because examination of all claims does not constitute a "serious burden." As stated in the MPEP, "[i]f the search and

examination of all the claims in an application can be made without serious burden, the examiner must examine them on the merits, even though they include claims to independent or distinct inventions.” MPEP § 803 (emphasis added). Here, search and examination of all claims would not constitute a “serious burden,” because the claims recite a method and a device for performing the method. There has been no showing as to why examination of all claims constitutes a “serious burden.” For at least this reason, Applicants respectfully request withdrawal of this restriction requirement.

Applicants reserve the right to file one or more divisional applications covering the subject matter of the non-elected claims.

In accordance with MPEP § 714.0(c), the undersigned represents that they are authorized to file a response to the outstanding office action and authorized to act in a representative capacity. A signed power of attorney form will be submitted shortly granting the registered agents of Foley and Lardner power of attorney in this case.

Should there be any questions concerning this application, the Examiner is invited to contact the undersigned at the number listed below.

Respectfully submitted,

By 

Date February 2, 2007

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